

HOUSE BILL No. 2772

By Committee on Commerce and Labor

2-6

10 AN ACT concerning real estate appraisers; relating to licensure, penal-
11 ties and exceptions; amending K.S.A. ~~58-4103~~ **58-4102, 58-4103, 58-**
12 **4117 and 58-4118** and repealing the existing ~~section~~ **sections**.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. **K.S.A. 58-4102 is hereby amended to read as follows:**
16 **58-4102. As used in this act:**

17 (a) **“Appraisal” or “real estate appraisal” means an analysis,**
18 **opinion or conclusion prepared by a real estate appraiser relating**
19 **to the nature, quality, value or utility of specified interests in, or**
20 **aspects of, identified real estate. An appraisal may be classified by**
21 **subject matter into either a valuation or an analysis. A valuation is**
22 **an estimate of the value of real estate or real property. An analysis**
23 **is a study of real estate or real property other than estimating**
24 **value.**

25 (b) **“Appraisal assignment” means an engagement for which an**
26 **appraiser is employed or retained to act, or would be perceived**
27 **by third parties or the public as acting, as a disinterested party in**
28 **rendering an unbiased analysis, opinion or conclusion relating to**
29 **the nature, quality, value or utility of specified interests in, or as-**
30 **pects of, identified real estate.**

31 (c) *“Brokers price opinion” and “comparative market analysis”*
32 *means an analysis, opinion or conclusion prepared by an individual li-*
33 *censed as a real estate broker or salesperson pursuant to K.S.A. 58-3034*
34 *et seq., and amendments thereto, relating to the price of specified interests*
35 *in or aspects of identified real estate property that is provided to a poten-*
36 *tial customer, client or third party in the ordinary course of business.*

37 (d) **“Board” means the real estate appraisal board established**
38 **pursuant to the provisions of this act.**

39 ~~(d)~~ (e) **“Federal law” means title XI of the financial institutions**
40 **reform, recovery and enforcement act of 1989 (12 U.S.C. 3331 et**
41 **seq.) and any other federal law, and any regulations adopted pur-**
42 **suant thereto.**

43 ~~(e)~~ (f) **“Federally related transaction” means any real estate-**

1 related financial transaction which: (1) A federal financial institu-
 2 tions regulatory agency or the resolution trust corporation en-
 3 gages in, contracts for or regulates; and (2) requires the services
 4 of an appraiser.

5 ~~(f)~~ (g) “Real estate” means an identified parcel or tract of land,
 6 including improvements, if any.

7 ~~(g)~~ (h) “Real estate appraisal organization” means any nation-
 8 ally recognized organization of professional appraisers.

9 ~~(h)~~ (i) “Real estate-related financial transaction” means any
 10 transaction involving: (1) The sale, lease, purchase, investment in
 11 or exchange of real property, including interests in property or the
 12 financing thereof; (2) the refinancing of real property or interests
 13 in real property; ~~and~~ (3) the use of real property or interests in
 14 property as security for a loan or investment, including mortgage-
 15 backed securities; or (4) a *federally related transaction*.

16 ~~(i)~~ (j) “Real property” means one or more defined interests,
 17 benefits and rights inherent in the ownership of real estate.

18 ~~(j)~~ (k) “Specialized services” means those appraisal services
 19 which do not fall within the definition of appraisal assignment.
 20 Specified services may include valuation work and analysis work.
 21 Regardless of the intention of the client or employer, if the ap-
 22 praiser would be perceived by third parties or the public as acting
 23 as a disinterested party in rendering an unbiased analysis, opinion
 24 or conclusion, the work is classified as an appraisal assignment and
 25 not specialized services.

26 ~~(k)~~ (l) A “state certified appraiser” means a person who devel-
 27 ops and communicates real estate appraisals and who holds a cur-
 28 rent, valid certificate issued to such person under the provisions
 29 of this act.

30 ~~(l)~~ (m) A “state licensed appraiser” means a person who devel-
 31 ops and communicates real estate appraisals and holds a current,
 32 valid license issued to such person under the provisions of this act.

33 ~~(m)~~ (n) “Written appraisal” means a written statement used in
 34 connection with a ~~federally related~~ *real estate-related financial trans-*
 35 *action that is independently and impartially prepared by a licensed*
 36 *or certified appraiser setting forth an opinion of defined value of*
 37 *an adequately described property as of a specific date, supported*
 38 *by presentation and analysis of relevant market information.*

39 (o) “Appraiser” means a person who develops and communicates real
 40 estate appraisals for real estate-related financial transactions and holds a
 41 current valid certification or license issued to such person under the pro-
 42 visions of K.S.A. 58-4101 et seq., and amendments thereto.

43 **Sec. 2.** K.S.A. 58-4103 is hereby amended to read as follows: 58-4103.

(a) Except as provided in subsection (b), no person, other than a state certified or licensed appraiser, shall:

(1) Engage in any written appraisal in connection with a ~~federally related real estate-related financial transaction for which certification or licensure is required pursuant to federal law; or;~~

(2) assume or use the title of state certified or licensed appraiser or any title, designation or abbreviation likely to create the impression of certification or licensure as a real estate appraiser by this state; or

(3) *advertise or otherwise represent in any manner that such person is a state certified or licensed appraiser.*

(b) The board shall recognize on a temporary basis the certification or license of an appraiser issued by another state ~~in accordance with federal law~~ if:

(1) The property to be appraised is part of a ~~federally related real estate-related financial transaction pursuant to federal law;~~

(2) the appraiser's business in this state is of a temporary nature; and

(3) the appraiser registers with the board, as prescribed by the board.

(c) Violation of subsection (a) is a ~~class B misdemeanor severity level 10, nonperson felony~~ **class A nonperson misdemeanor**.

(d) ~~The provisions of this act requiring certification or licensure or the issuance of a certificate or license authorizing the practice of real estate appraisal shall not be construed to prevent a person who is not a state certified or licensed real estate appraiser from appraising real estate for compensation if state certification or licensure is not required pursuant to federal law.~~

~~(e)~~ An individual who is not a state certified or licensed appraiser may assist in the preparation of an appraisal if: (1) The assistant is under the direct supervision of an individual who is a state licensed or certified appraiser; and (2) the final appraisal document is approved and signed by an individual who is a state certified or licensed appraiser.

(e) (1) *The provisions of paragraph (1) of subsection (a) shall not be applicable to financial institutions engaging in real estate-related financial transactions and otherwise subject to K.S.A. 58-4101 et seq., and amendments thereto, when the following conditions are met:*

(A) *An employee of the financial institution conducts an appraisal as defined in subsection (a) of K.S.A. 58-4102, and amendments thereto, or conducts an evaluation in accordance with state and federal banking regulations; and*

(B) *when the loan that is the subject of such appraisal is not intended to be sold in the secondary market and is intended to be held by the financial institution for the life of the loan.*

(2) *If the financial institution disposes of the loan granted under paragraph (1)(B) of this subsection in the secondary market, such financial*

1 institution shall be required to obtain an appraisal by a state licensed or
2 certified appraiser as required by paragraph (1) of subsection (a). The
3 employee of the financial institution that conducted the prior appraisal
4 shall not be considered to be an appraiser under the law unless such
5 person is a state certified or licensed appraiser.

6 (f) The provisions of paragraph (1) of subsection (a) shall not preclude
7 an individual licensed as a real estate broker or salesperson pursuant to
8 K.S.A. 58-3034 *et seq.*, and amendments thereto, from performing and
9 providing a comparative market analysis or broker's price opinion to a
10 customer, client or third party for compensation in the ordinary course
11 of business. In no event shall such comparative market analysis or broker's
12 price opinion be referred to as an appraisal nor shall such individual
13 represent such individual's self as a certified or licensed appraiser under
14 this act unless such person is a state certified or licensed appraiser.

15 (g) The provisions of paragraph (1) of subsection (a) shall not pre-
16 clude an individual licensed as a certified public accountant pursuant to
17 K.S.A. 1-301 *et seq.*, and amendments thereto, from performing and pro-
18 viding services as a certified public accountant or as otherwise allowed
19 by law. In no event shall any report by a certified public accountant be
20 referred to as an appraisal or such certified public accountant represent
21 such individual's self as a state certified or licensed appraiser unless such
22 certified public accountant is a state certified or licensed appraiser.

23 (h) The provisions of paragraph (1) of subsection (a) shall not pre-
24 clude an individual licensed as an attorney pursuant to K.S.A. 7-103 *et*
25 *seq.*, and amendments thereto, from performing and providing services
26 as an attorney or as otherwise allowed by law. In no event shall any report
27 by an attorney be referred to as an appraisal or such attorney represent
28 such individual's self as a state certified or licensed appraiser unless such
29 attorney is a state certified or licensed appraiser.

30 **Sec. 3. K.S.A. 58-4117 is hereby amended to read as follows:**
31 **58-4117. (a) As a prerequisite to renewal of a certificate or license,**
32 **the appraiser shall present evidence satisfactory to the board of**
33 **having met the continuing education requirements.**

34 **(b) The basic continuing education requirement for renewal of**
35 **a certificate or license shall be the completion by the applicant,**
36 **during the immediately preceding term of certification or licen-**
37 **sure, of the number of hours of classroom instruction which have**
38 **been established pursuant to K.S.A. 58-4109 and amendments**
39 **thereto and which have received the approval of the board.**

40 **(c) No amendment or repeal of a rule and regulation adopted**
41 **by the board shall operate to deprive an applicant of credit toward**
42 **renewal of a certificate or license for any course of instruction**
43 **completed by the applicant prior to the amendment or repeal of**

1 the rule and regulation which would have qualified for continuing
2 education credit under the rule and regulation as it existed prior
3 to the repeal or amendment.

4 (d) A certificate or license that has been revoked as a result of
5 disciplinary action by the board shall not be reinstated unless the
6 applicant presents evidence of completion of the continuing edu-
7 cation required pursuant to this act. ~~This requirement of evidence of~~
8 ~~continuing education shall not be imposed upon an applicant for rein-~~
9 ~~statement who has been required to successfully complete an examination~~
10 ~~as a condition of reinstatement.~~

11 Sec. 4. K.S.A. 58-4118 is hereby amended to read as follows:
12 58-4118. (a) The board may investigate the actions of a state cer-
13 tified or licensed appraiser and may revoke, condition, limit or
14 suspend the certificate or license of the appraiser, or censure the
15 appraiser, for any of the following acts or omissions:

16 (1) Procuring or attempting to procure a certificate or license
17 pursuant to this act by knowingly making a false statement, sub-
18 mitting false information, refusing to provide complete informa-
19 tion in response to a question in an application for certification or
20 licensure or any form of fraud or misrepresentation;

21 (2) failing to meet the minimum qualifications established by
22 this act;

23 (3) paying money, other than provided for by this act, to any
24 member or employee of the board to procure a certificate or li-
25 cense under this act;

26 (4) a plea of guilty or nolo contendere to, or conviction of: (A)
27 Forgery, embezzlement, obtaining money under false pretenses,
28 larceny, extortion, conspiracy to defraud or any other similar of-
29 fense; (B) a crime involving moral turpitude; or (C) any felony
30 charge;

31 (5) an act or omission involving dishonesty, fraud or misrep-
32 resentation, with the intent to substantially benefit the appraiser
33 or another person or with the intent to substantially injure another
34 person;

35 (6) violation of any of the standards for the development or
36 communication of real estate appraisals as provided in this act;

37 (7) failure or refusal without good cause to exercise reasonable
38 diligence in developing an appraisal, preparing an appraisal report
39 or communicating an appraisal;

40 (8) negligence or incompetence in developing an appraisal,
41 preparing an appraisal report or communicating an appraisal;

42 (9) willfully disregarding or violating any provision of this act
43 or rules and regulations of the board for the administration and

1 enforcement of the provisions of this act;

2 (10) accepting an appraisal assignment, described in K.S.A. 58-
3 4122, and amendments thereto, when the employment itself is con-
4 tingent upon the appraiser reporting a predetermined estimate,
5 analysis or opinion, or when the fee to be paid is contingent upon
6 the opinion, conclusion or valuation reached, or upon the conse-
7 quences resulting from the appraisal assignment;

8 (11) violating the confidential nature of governmental records
9 to which the appraiser gained access through employment or en-
10 gagement as an appraiser by a governmental agency;

11 (12) entry of a final civil judgment against the person on
12 grounds of fraud, misrepresentation or deceit in the making of any
13 appraisal of real property;

14 (13) disciplinary action in relation to appraisal work, including,
15 but not limited to, denial, revocation or suspension of a license or
16 certificate by another state, district or territory of the United
17 States or another country; or

18 (14) receipt of an order of prohibition in relation to appraisal
19 work, by consent or otherwise, issued by an agency of the federal
20 government.

21 (b) In addition to or in lieu of any other administrative, civil or
22 criminal remedy provided by law, the board upon a finding that a
23 state certified or licensed appraiser has violated any provision of
24 this act or of any rules and regulations adopted hereunder or upon
25 a finding that a person who is not a state certified or licensed appraiser
26 has violated any provision of subsection (a) of K.S.A. 58-4103, and amend-
27 ments thereto, may impose upon such appraiser or such person a civil
28 fine not exceeding \$1,000 for each violation. All moneys collected
29 by the board from such fines shall be remitted to the state trea-
30 surer in accordance with the provisions of K.S.A. 75-4215, and
31 amendments thereto. Upon receipt of each such remittance, the
32 state treasurer shall deposit the entire amount in the state treasury
33 to the credit of the state general fund.

34 (c) In a disciplinary proceeding based upon a civil judgment,
35 the appraiser shall be afforded an opportunity to present matters
36 in mitigation and extenuation but may not collaterally attack the
37 civil judgment.

38 (d) If the board determines that a person has violated any provision
39 of subsection (a) of K.S.A. 58-4103, and amendments thereto, in addition
40 to any other penalties imposed by law, the board may issue a cease and
41 desist order against such person.

42 (e) All administrative proceedings pursuant to this section shall
43 be conducted in accordance with the Kansas administrative pro-

1 **cedure act.**

2 Sec. ~~2~~ **5.** K.S.A. ~~58-4103~~ **is 58-4102, 58-4103, 58-4117 and 58-**
3 **4118 are** hereby repealed.

4 Sec. ~~3~~ **6.** This act shall take effect and be in force from and after its
5 publication in the statute book.